

1 THE HONORABLE RICHARD A. JONES
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 WILLIAM F. WINGATE,

11 Plaintiff,

v.

12 No. 2:15-cv-00822-RAJ

13 ORDER

14 CYNTHIA A. WHITLATCH, in her official
15 and individual capacities,

16 Defendant.

17 This matter comes before the Court on Plaintiff's Motion for Attorneys' Fees &
18 Costs. Dkt. # 226. Defendant opposes the reasonableness of the requested fees. Dkt. #
19 238. For the reasons that follow, the Court GRANTS in part and DENIES in part
20 Plaintiff's motion.

21 **I. BACKGROUND**

22 Mr. Wingate brought this civil rights action against the City of Seattle, the
23 Seattle Police Department, and Ms. Whitlatch after Ms. Whitlatch arrested him for
24 refusing to drop the golf club that he used as a cane. Dkt. # 14 (Second Amended
25 Complaint). The Court dismissed Mr. Wingate's Fourth Amendment claims and his
26 related state claims for false arrest and false imprisonment based upon Mr. Wingate's
27 plea agreement with the City. Dkt. # 127. The Court also dismissed the City
Defendants from this action because Mr. Wingate failed to present a cognizable theory
for their involvement beyond vicarious liability. *Id.*, Dkt. # 130.

1 The matter went to trial in October 2016. On the sixth day of trial, Mr. Wingate
2 voluntarily dismissed his state claim for intentional infliction of emotional distress.
3 Dkt. # 216. On November 8, 2016, the jury found that Ms. Whitlatch had violated Mr.
4 Wingate's Fourteenth Amendment Equal Protection rights and discriminated against
5 him in violation of Washington's Law Against Discrimination. Dkt. # 218. The jury
6 awarded Mr. Wingate \$325,000 in damages. *Id.*

7 Mr. Wingate's attorneys now request that the Court award them \$742,279.50 in
8 fees and \$30,631.02 in costs. Dkt. ## 226, 242, 247. Ms. Whitlatch does not dispute
9 that Mr. Wingate's attorneys should be awarded fees and costs, but does dispute the
10 requested amount. Dkt. # 238. Ms. Whitlatch asks the Court to reduce the attorneys'
11 total fees and costs to \$376,151.82. *Id.*

12 **II. ANALYSIS**

13 A. Lodestar Method

14 Both parties agree that the proper way for the Court to determine Mr. Wingate's
15 attorneys' fees and costs is by using the Lodestar Method. Dkt. ## 226 at p. 4, 238 at p.
16 4. To calculate the lodestar amount, the Court multiplies the number of hours
17 reasonably expended by the reasonable hourly rate. *In re Washington Pub. Power
Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1295 n.2 (9th Cir. 1994); *United Steelworkers of
Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 406 (9th Cir. 1990); *Bowers v. Transamerica
Title Ins. Co.*, 100 Wash. 2d 581, 597 (1983). The hours reasonably expended must be
21 spent on claims having a "common core of facts and related legal theories." *Martinez v.
City of Tacoma*, 81 Wash. App. 228, 242–43 (1996); *Webb v. Sloan*, 330 F.3d 1158,
23 1168-69 (9th Cir. 2003). The Court discounts hours spent on unsuccessful claims,
24 overstaffing, duplicated or wasted effort, or otherwise unproductive time. *Chalmers v.
City of Los Angeles*, 796 F.2d 1205, 1210 (9th Cir. 1986), *opinion amended on denial of
reh'g*, 808 F.2d 1373 (9th Cir. 1987); *Bowers*, 100 Wash. 2d at 597, 600. The Court
27 may adjust the lodestar calculation "up or down to reflect factors, such as the contingent

1 nature of success in the lawsuit or the quality of legal representation, which have not
2 already been taken into account in computing the ‘lodestar’ and which are shown to
3 warrant the adjustment by the party proposing it.” *Id.* at 594 (citing *Miles v. Sampson*,
4 675 F.2d 5, 8 (1st Cir. 1982)) (emphasis in original); *see also Chalmers*, 796 F.2d at
5 1212.

6 1. *Reasonable Hourly Rate*

7 The established rate for billing clients may be a reasonable hourly rate, but it is
8 not conclusive. *Bowers*, 100 Wash. 2d at 597. In addition to the established rate, the
9 court may consider the level of skill required by the litigation, time limitations imposed
10 on the litigation, the amount of the potential recovery, the attorney’s reputation, and the
11 undesirability of the case. *Id.*; *see also Chalmers*, 796 F.2d at 1210-11.

12 Ms. Mindenbergs and Ms. Sargent, attorneys for Mr. Wingate, state that their
13 rates are \$400 and \$350 per hour, respectively. Dkt. # 226. However, in May 2016,
14 Ms. Sargent stated in a declaration that her rate is \$325 per hour. Dkt. # 92. Though
15 Ms. Sargent may increase her rates as she sees fit, she offered no authority to prove that
16 she may collect at a higher rate for work that she performed at an agreed-upon lower
17 rate. Moreover, Ms. Sargent did not separate the hours she worked at her previous rate
18 versus those hours she worked at her current rate. Therefore, the Court will reduce her
19 rate to \$325 per hour for the hours she worked on this matter. The Court finds that Ms.
20 Mindenbergs’s rate of \$400 per hour is reasonable based on her experience and is
21 consistent with her prior declaration in this matter. *See* Dkt. # 93. Similarly, the Court
22 finds that Ms. Farr’s hourly rate of \$275 is reasonable in the local marketplace. *Van*
23 *Skike v. Dir., Office of Workers’ Comp. Programs*, 557 F.3d 1041, 1046 (9th Cir. 2009)
24 (“The Supreme Court has consistently held that reasonable fees ‘are to be calculated
25 according to the prevailing market rates in the relevant community’”) (internal
26 citations omitted). The Court also finds that \$100-\$125 per hour for paralegal work is
27 reasonable in the local marketplace. Ms. Mindenbergs billed out Mr. Proctor’s

1 paralegal services at \$150 per hour, and though the Court finds this steep when
2 compared to similarly situated paralegals in Seattle's marketplace, it nonetheless
3 approves of this rate for the work done in this matter. Finally, the Court finds that Ms.
4 Catunao's hourly rate of \$125 is reasonable.

5 The Court notes that Ms. Mindenbergs claims to have employed a third-year law
6 student, Ms. Bakken, to help with the matter. However, there are no time entries for
7 Ms. Bakken—Ms. Mindenbergs merely wrote Ms. Bakken a check for \$634.00, Dkt. #
8 227-1 at p. 18—and nothing to give the Court reason to believe her fees were reasonable
9 or even related to this matter. Therefore, the Court rejects any fees that Mr. Wingate's
10 attorneys may seek for Ms. Bakken.

11 2. *Time Spent*

12 The fee applicant bears the burden of documenting the hours expended in
13 litigation and must submit evidence in support of those hours. *Hensley v. Eckerhart*,
14 461 U.S. 424, 434 (1983). This documentation need not be exhaustive or in minute
15 detail, but must inform the court, in addition to the number of hours worked, of the type
16 of work performed and the category of attorney who performed the work (*i.e.*, senior
17 partner, associate, etc.). *Bowers*, 100 Wash. 2d at 597.

18 The Court is concerned with quite a few of the attorneys' time entries that appear
19 duplicative and inefficient. For example, Ms. Mindenbergs and Ms. Sargent reviewed
20 documents—a task that an associate or even a law student could perform—for more
21 than 153 hours. Dkt. ## 227-1 at pp. 7-11; 229-1 at pp. 5-6, 8-11, 13, 15. In fact, the
22 paralegals on this matter did review those documents—for over 20 hours. Dkt. # 227-1
23 at pp. 25-28. In addition, Ms. Mindenbergs and the paralegals appeared to prepare the
24 same exhibits. *Id.* at 4-5, 8, 16, 31. Moreover, Mr. Wingate's attorneys appear to have
25 written off hours spent working on unsuccessful claims or unrelated press conferences

1 and community events.¹ However, several entries—*see, e.g.*, Dkt. ## 227-7 at pp. 2-3,
2 19; 229-1 at pp. 2; 230-1 at pp. 2-4, 6; 231-1 at pp. 2—remain regarding these claims
3 and media related events. The attorneys also appeared to bill for clerical tasks that were
4 then duplicated by paralegals. For example, Ms. Sargent billed over three hours to fax
5 documents, Dkt. # 229-1 at pp. 6-8, and her paralegal also billed to fax the same
6 documents, Dkt. # 231-1 at pp. 6-8. Experienced lawyers should not bill for tasks
7 properly performed by legal assistants or paralegals to ensure such hours would be
8 compensable in the event their client was successful in a request for attorney's fees.

9 The Court is also concerned with the amount of time expended on tasks for
10 which experienced attorneys, such as Ms. Mindenbergs and Ms. Sargent, should be
11 familiar or for which lower billing associates or paralegals should have been utilized.
12 For example, Ms. Mindenbergs spent over five hours researching and drafting a single
13 jury instruction on racial animus, over three hours reviewing model jury instructions
14 when the majority of those instructions did not apply to this case, over four hours
15 researching three of the most common Rules of Evidence, and over two hours drafting a
16 single jury instruction on probable cause. Dkt. # 227-1 at pp. 13, 15. Ms. Mindenbergs
17 also spent over five hours researching issues for a trial brief; but the trial brief merely
18 summarized the arguments that Ms. Mindenbergs had already been working on and
19 preparing for months. *Id.* at p. 11. Ms. Sargent spent more than four hours reviewing
20 Ms. Whitlatch's Answer to a Complaint that she then spent over four hours amending,
21 ten hours preparing initial disclosures, over eleven hours preparing a four-page surreply
22 that references common Rules of Evidence, nearly seven hours reviewing a notice of

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¹ The Court agrees that the press releases and community events in this matter were unrelated to the legal claims
25 and therefore counsel cannot recover for those hours. Moreover, the Court finds Mr. Wingate's Fourth
26 Amendment and Washington state claims regarding false arrest and false imprisonment to be separate from the
27 successful discrimination claims. The former claims turned on the issue of probable cause, which was resolved
based on Mr. Wingate's plea agreement with the City. Therefore, in this case, the legal theories were sufficiently
divided such that counsel may not recover for the time spent on those unsuccessful claims. *McCown v. City of
Fontana*, 565 F.3d 1097, 1103 (9th Cir. 2009) ("A plaintiff is not eligible to receive attorney's fees for time spent
on unsuccessful claims that are unrelated to a plaintiff's successful § 1983 claim.").

1 appearance, over four hours reviewing a one-sentence docket entry requiring Mr.
2 Wingate to file a response, and almost three hours reviewing a minute order from this
3 Court that merely set the date for the six-day trial. Dkt. # 229-1 at pp. 3-4, 15, 21, 23,
4 26. Remarkably, Ms. Mindenbergs claims that she required 58 hours to research the
5 issues and prepare Mr. Wingate's reply brief to the instant motion, and her paralegal
6 required 28 hours to do the same. Dkt. # 243 at p. 10. That is 86 hours spent preparing
7 a brief that, by definition, raises no new issues or arguments. *See Zamani v. Carnes*,
8 491 F.3d 990, 997 (9th Cir. 2007) ("The district court need not consider arguments
9 raised for the first time in a reply brief.").

10 The Court further notes that Ms. Sargent employed a law student, Ms. Catunao,
11 during the pendency of this litigation. Dkt. # 229 at ¶ 22. Ms. Sargent billed out the
12 law student at the same rate as a new paralegal. *Id.* However, a new paralegal has
13 completed a certain level of training that a law student has not. Though the Court finds
14 Ms. Catunao's rate reasonable, the Court is distressed to find that Ms. Sargent did not
15 discount Ms. Catunao's hours to account for her lack of training and knowledge on the
16 matter. Ms. Sargent seeks to bill for 89.35 hours of Ms. Catunao's work when much of
17 this work was below the level of efficiency expected of paralegals and junior associates.
18 For example, Ms. Catunao spent over five hours drafting a surreply that references
19 common Rules of Evidence and for which Ms. Sargent had already billed over eleven
20 hours to draft, over four hours researching case law for a single jury instruction on
21 probable cause that Ms. Mindenbergs then spent over two hours drafting, and almost six
22 hours drafting an unnecessary motion in anticipation of a motion that was not filed.
23 Dkt. # 232-1 at pp. 2-4. The Court recognizes the advantages in hiring law students and
24 finds this tradition beneficial to both law firms and law students. However, the Court is
25 also aware that attorneys use a reasonable approach when billing clients for law
26 students' time, often taking into account the students' learning curve both in terms of
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1 subject matter and general inexperience with the kind of research and writing necessary
2 in the law firm context. The approach taken here was not reasonable.

3 The Court found dozens of instances of inefficiencies and duplications in the
4 bills that counsel submitted. The Court accounted for such overbilling and finds the
5 following calculations reasonable:

- 6 • Ms. Mindenbergs may collect for 600 hours;
- 7 • Ms. Sargent may collect for 610 hours;
- 8 • Ms. Farr may collect for 200 hours;
- 9 • Ms. Calvo may collect for 200 hours;
- 10 • Mr. Proctor may collect for 95 hours;
- 11 • Ms. Renton may collect for 300 hours;
- 12 • Ms. Catunao may collect for 8 hours;
- 13 • The attorneys may collect their requested costs, including the cost of Mr.
14 Fury, in the amount of \$36,931.02 (Dkt. # 242-1 at p. 4).

15 Altogether, the Court awards Mr. Wingate's attorneys \$600,431.02 in attorney's
16 fees and costs.

17 **III. CONCLUSION**

18 For all the foregoing reasons, the Court **GRANTS in part and DENIES in part**
19 Mr. Wingate's motion for attorney's fees and costs. Dkt. # 226. Mr. Wingate's
20 attorneys' incurred \$600,431.02 in fees and costs. Ms. Whitlatch must pay these fees
21 and costs within thirty (30) days of the date of this Order.

22 Dated this 2nd day of May, 2017.

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The Honorable Richard A. Jones
United States District Judge